UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

BROTHERHOOD OF LOCOMOTIVE ENGINEERS and UNITED TRANSPORTATION UNION,	)	
PLAINTIFFS	)	
v.	)	**Civil No. 98-284-P-H**
SPRINGFIELD TERMINAL RAILWAY COMPANY and AROOSTOOK AND BANGOR RESOURCES, INC.,	)	
DEFENDANTS	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PLAINTIFFS' MOTION FOR CITATION OF CONTEMPT

On March 2, 1999, I entered a permanent injunction against the defendants Springfield Terminal Railway Company ("Springfield Terminal") and Aroostook and Bangor Resources, Inc. ("ABR"). On May 13, 1999, the Unions moved for a citation of contempt and requested a hearing. The matter was delayed upon the parties' mutual request. On October 20, 1999, I heard oral argument and testimonial evidence presented by the Unions. Later that day, the parties agreed on the record to a stipulated record on the request for contempt. The stipulated record consists of the affidavits and declarations and attachments filed by both parties in seeking and resisting the contempt citation and, in addition, the testimony presented at the October 20 hearing. The parties agreed specifically that I, as factfinder, am to resolve any factual disputes and any inferences to be drawn from facts that I find. See Boston Five Cents Sav. Bank v. Secretary, Dep't of HUD, 768 F.3d 5, 11-12 (1st Cir. 1985). The parties also agreed on the record that the nature of the alleged contempt

is civil, not criminal. Under First Circuit caselaw, any factual findings supporting a civil contempt citation must be supported by clear and convincing evidence. See AMF, Inc. v. Jewett, 711 F. Supp. 1096, 1100 (1st. Cir. 1983).

FINDINGS OF FACT

1. The relationships among the Unions, Springfield Terminal and ABR are set forth in my Judgment and Order dated February 5, 1999.

2. I issued the permanent injunction against Springfield Terminal and ABR on March 2, 1999.

3. By March 5, 1999, the ABR switching equipment and the ABR employees who had previously been doing the enjoined switching were being used to conduct switching at Lincoln Pulp & Paper ("Lincoln") with the assistance of a Springfield Terminal employee. At an unspecified date the same arrangements began at Champion International, Inc. ("Champion"). Both Lincoln and Champion had previously been serviced by Springfield Terminal with union personnel pursuant to the collective bargaining agreements, and then by ABR until I enjoined the practice. Champion has expressed the affirmative desire to have someone other than Springfield Terminal do its switching.

4. The new arrangements were undertaken pursuant to an equipment lease agreement entered into between Springfield Terminal and a separate corporation, Stanley Brothers, L.L.C. ("Stanley"), by which the ABR equipment was leased for one dollar per month to Stanley. The two ABR employees left their employment with ABR and were hired by Stanley.

5. Under the terms of the equipment lease, Springfield Terminal provided training to Stanley on operating the equipment, but Stanley agreed to maintain the equipment and to carry liability insurance. The lease agreement also specifies that the relationship between Springfield

Terminal and Stanley is that of an independent contractor. The lease is subject to termination without cause upon five days written notice by either party. Stanley indemnifies Springfield Terminal for any damages arising out of activities conducted under the lease.

6. The Stanley principals previously operated and continue to operate a trucking company that serviced Lincoln. An officer of Lincoln, Jameson, asked Stanley if it would be interested in performing activities like those ABR had done. Next, a Guilford employee, Culliford, approached Stanley with the arrangement.

7. A copy of the injunction was provided to Stanley.

8. Stanley continues to provide switching services to both Lincoln and Champion.

CONCLUSIONS OF LAW

There is little doubt in my mind that Springfield Terminal wants to avoid the effect of the injunction and has found a device to avoid it, but that is not the issue. The Union must show by clear and convincing evidence that Springfield Terminal and/or ABR has violated one or more terms of the injunction.

The permanent injunction has two operative paragraphs. The first paragraph enjoins both defendants and a variety of related parties[1] from "transferring the work of industrial switching from defendant Springfield Terminal Railway Company to defendant Aroostook and Bangor Resources, Inc. . . ." Under no set of circumstances can the challenged Stanley activities be construed as a transfer of Springfield Terminal switching work to ABR. Paragraph one, therefore, is not involved.

[1] "[T]heir officers, directors, agents, servants, employees, attorneys, and all those persons or entities in active consort or participation with them, who receive actual notice of this injunction by personal service or otherwise. . . ."

Paragraph two enjoins ABR, "its officers, directors, agents, servants, employees, attorneys, and all those persons or entities in active concert or participation with them, who receive actual notice of this injunction by personal service or otherwise" from "performing industrial switching for Lincoln Pulp & Paper, [or] for Champion International, Inc. . . ." The Unions contend that this principle is violated because Stanley is acting as an agent of ABR in performing industrial switching for Lincoln and Champion.

The Unions cannot show by clear and convincing evidence that Stanley is acting as an agent of ABR.[2] ABR is no longer doing any switching at Lincoln or at Champion. ABR has no relationship with Stanley—instead the lease agreement to Stanley runs from Springfield Terminal. According to the lease, Stanley is operating as an independent contractor. (The lease statement is not determinative, but it is relevant.)[3] Nothing prevented Stanley from hiring the two employees who left ABR and indeed the evidence reveals that these two employees are doing other work for Stanley beyond the switching. It is also clear that at least one of the companies, Champion, actively wanted someone other than Springfield Terminal to do the switching. It is entitled to make arrangements

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[2] "Agency is the fiduciary relationship 'which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.'" Perry v. H.O. Perry & Son Co., 711 A.2d 1303, 1305 (Me. 1998) (quoting Desfosses v. Notis, 333 A.2d 83, 86 (Me. 1975); accord RESTATEMENT (SECOND) OF AGENCY § 1(1) (1958).

[3] The Unions presented evidence that they claim shows that Springfield Terminal continued to orchestrate the switching. Specifically, when union representatives were present at the Lincoln Station with Springfield Terminal employee Labbe, a fax came in that Labbe stated was switching instructions and which he thereupon proceeded to deliver to the Lincoln mill. The Unions maintain that any such instructions could only have related to placement of the railcars and that Lincoln was in the best position to know where they should be placed. As a result, the receipt of the fax, according to the Unions, demonstrates that Springfield Terminal is still involved in doing the switching but through another device. There are two problems with the assertion. First, I cannot know the contents of the fax and the defendants have plausibly asserted that the fax contained instructions as to what cars were incoming so that the mill would be advised of that. Second, even if I accept that Springfield Terminal was thereby avoiding the effect of the injunction, it did not contemptuously violate the terms of injunction for the reasons described in text.

accordingly. Therefore, I conclude that under the injunction as it is now written neither Springfield Terminal nor ABR is in civil contempt.

The plaintiffs' motion for citation of contempt is **DENIED**.

SO ORDERED.

DATED THIS 22ND DAY OF OCTOBER, 1999.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE